



February 20, 2004

ENGROSSED SENATE BILL No. 453

DIGEST OF SB 453 (Updated February 18, 2004 11:32 am - DI 97)

Citations Affected: IC 5-10; IC 20-5; IC 21-2; IC 27-6; IC 27-9.

Synopsis: School corporation insurance and property and casualty guaranty association. Provides for a school corporation employee health insurance pilot project. Sets forth provisions allowing school corporations to enter into interlocal agreements to establish a cooperative risk management program to provide for coverage of certain risks of the school corporations. Amends various provisions of the property and casualty insurance guaranty association law, including: (1) definitions; (2) board membership; (3) association obligations; (4) assessments; and (5) exhaustion of insurance policy benefits.

Effective: Upon passage; July 1, 2004.

Clark, Lanane

(HOUSE SPONSORS — FRY, RIPLEY)

January 12, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

January 29, 2004, amended, reported favorably — Do Pass.

February 3, 2004, read second time, amended, ordered engrossed.

February 4, 2004, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 6, 2004, read first time and referred to Committee on Insurance, Corporations and Small Business.

February 19, 2004, amended, reported — Do Pass.

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ES 453—LS 7166/DI 97+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 453

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-8-2.8 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]: Sec. 2.8. (a) As used in this section, "pilot project" refers
4 to the school corporation health benefit pilot project established by
5 the state personnel department under subsection (d).

6 (b) As used in this section, "state employee health plan" means:

- 7 (1) the self-insurance program established by the state
8 personnel department under section 7(b) of this chapter; or
9 (2) a contract with a prepaid health care delivery plan entered
10 into by the state personnel department under section 7(c) of
11 this chapter.

12 (c) Notwithstanding any other provision of this chapter to the
13 contrary, and notwithstanding IC 20-5-2-2(14), a school
14 corporation may:

- 15 (1) apply to participate in the pilot project; and
16 (2) if chosen by the department of insurance, participate in
17 the pilot project.

ES 453—LS 7166/DI 97+



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(d) The state personnel department, in cooperation with the department of insurance, shall develop and implement a school corporation health benefit pilot project. The pilot project:

(1) must enable ten (10) school corporations that:

(A) apply for participation in the project; and

(B) are chosen by the department of insurance;

to provide coverage of health care services for active and retired employees of the school corporation under a state employee health plan that covers active state employees and is chosen by the school corporation; and

(2) must be established not later than January 1, 2005.

(e) The pilot project must do the following:

(1) Specify participation requirements, including minimum participation and contribution requirements, and an application process for school corporations that wish to apply.

(2) Provide for the department of insurance to choose ten (10) eligible school corporations for participation in the project.

(3) Provide for enrollment of the active and retired employees of the participating school corporations in a state employee health plan not later than June 30, 2005.

(4) Provide for coverage of the active and retired employees of the participating school corporations under the state employee health plan until a date not earlier than June 30, 2010, and not later than December 31, 2010.

(5) Require the state personnel department to provide to the legislative council in an electronic format under IC 5-14-6:

(A) an annual report not later than July 1 of each year; and

(B) a final report, including aggregate information, not later than July 1, 2011;

concerning the effect of the participation in the state employee health plan by the active and retired employees of the school corporation employees, including the effect on premium rates, costs to the state and to the school corporations, and any other information determined relevant by the legislative council.

(6) Conclude insurance coverage not later than December 31, 2010.

(f) A school corporation that participates in the pilot project under this section shall provide for payment of the premium for the coverage as provided in section 2.6 of this chapter. The state shall not pay any part of the premium for the coverage. The administrator of the state employee health plan described in

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subsection (b)(1) shall not pay any part of the administrative cost or other costs of the coverage.

(g) The state personnel department may adopt rules under IC 4-22-2 to implement this section.

(h) This section expires December 31, 2011.

SECTION 2. IC 20-5-2-2, AS AMENDED BY P.L.286-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. In carrying out the school purposes of each school corporation, its governing body acting on its behalf shall have the following specific powers:

(1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law.

(2) To take charge of, manage, and conduct the educational affairs of the school corporation and to establish, locate, and provide the necessary schools, school libraries, other libraries where permitted by law, other buildings, facilities, property, and equipment therefor.

(2.5) To appropriate from the general fund an amount, not to exceed the greater of three thousand dollars (\$3,000) per budget year or one dollar (\$1) per pupil, not to exceed twelve thousand five hundred dollars (\$12,500), based upon the school corporation's previous year's average daily membership (as defined in IC 21-3-1.6-1.1) for the purpose of promoting the best interests of the school corporation by:

(A) the purchase of meals, decorations, memorabilia, or awards;

(B) provision for expenses incurred in interviewing job applicants; or

(C) developing relations with other governmental units.

(3) To acquire, construct, erect, maintain, hold, and to contract for such construction, erection, or maintenance of such real estate, real estate improvements, or any interest in either, as the governing body deems necessary for school purposes, including but not limited to buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing of school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchases money

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contracts providing for a retention of a security interest by seller until payment is made or by notes where such contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or IC 21-5-12. To repair, remodel, remove, or demolish any such real estate, real estate improvements, or interest in either, as the governing body deems necessary for school purposes, and to contract therefor. To provide for energy conservation measures through utility energy efficiency programs or under a guaranteed energy savings contract as described in IC 36-1-12.5.

(4) To acquire such personal property or any interest therein as the governing body deems necessary for school purposes, including but not limited to buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by outright purchase for cash, or under conditional sales or purchase money contracts providing for a security interest by the seller until payment is made or by notes where such contract, security, retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish such personal property. All purchases and contracts delineated under the powers given under subdivision (3) and this subdivision shall be subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of agencies of the state as provided in section 3 of this chapter.

(5) To sell or exchange any of such real or personal property or interest therein, which in the opinion of the governing body is not necessary for school purposes, in accordance with IC 20-5-5, to demolish or otherwise dispose of such property if, in the opinion of the governing body, it is not necessary for school purposes and is worthless, and to pay the expenses for such demolition or disposition.

(6) To lease any school property for a rental which the governing body deems reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children aged five (5) through fourteen (14) years that operates before or after the school day, or both, and during periods when school is not in session;

if the property is not needed for school purposes. Under this

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subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if the property subject to a long term lease is being paid for from money in the school corporation's debt service fund, then all proceeds from the long term lease shall be deposited in that school corporation's debt service fund so long as the property has not been paid for. The governing body may, at its option, use the procedure specified in IC 36-1-11-10 in leasing property under this subdivision.

(7) To employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under IC 20-6.1-3), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school purposes, including but not limited to the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and such other personnel or services, all as the governing body considers necessary for school purposes. To fix and pay the salaries and compensation of such persons and such services. To classify such persons or services and to adopt schedules of salaries or compensation. To determine the number of such persons or the amount of services thus employed or contracted for. To determine the nature and extent of their duties. The compensation, terms of employment, and discharge of teachers shall, however, be subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers shall be subject to and shall be governed by any laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of such school corporation shall be submitted to the state board of accounts for approval to the end that such services shall be used

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by the school corporation when the governing body determines that it is in the best interests of the school corporation while at the same time providing reasonable accountability for the funds expended.

(8) Notwithstanding the appropriation limitation in subdivision (2.5), when the governing body by resolution deems a trip by an employee of the school corporation or by a member of the governing body to be in the interest of the school corporation, including but not limited to attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit such employee to be absent in connection with such trip without any loss in pay and to refund to such employee or to such member his reasonable hotel and board bills and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

(9) To transport children to and from school, when in the opinion of the governing body such transportation is necessary, including but not limited to considerations for the safety of such children and without regard to the distance they live from the school, such transportation to be otherwise in accordance with the laws applicable thereto.

(10) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including but not limited to the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate such program, and the purchase of any material and supplies therefor, charging students for the operational costs of such lunch program, fixing the price per meal or per food item. To operate such lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in any surplus commodity or lunch aid program.

(11) To purchase textbooks, to furnish them without cost or to rent them to students, to participate in any textbook aid program, all in accordance with applicable law.

(12) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(13) To levy taxes, to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with the laws applicable thereto. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 20-5-4.

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(14) To purchase insurance, ~~or to~~ establish and maintain a program of self-insurance, **or enter into an interlocal agreement with one (1) or more school corporations to establish and maintain a cooperative risk management program under IC 20-5-2.7**, relating to the liability of the school corporation or its employees in connection with motor vehicles or property and for any additional coverage to the extent permitted and in accordance with IC 34-13-3-20. To purchase additional insurance, ~~or to~~ establish and maintain a program of self-insurance, **or enter into an interlocal agreement with one (1) or more school corporations to establish and maintain a cooperative risk management program under IC 20-5-2.7**, protecting the school corporation and members of the governing body, employees, contractors, or agents of the school corporation from any liability, risk, accident, or loss related to any school property, school contract, school or school related activity, including but not limited to the purchase of insurance or the establishment and maintenance of a self-insurance program protecting such persons against false imprisonment, false arrest, libel, or slander for acts committed in the course of their employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to any property owned, leased, or held by the school corporation. To:

(A) participate in a state employee health plan under IC 5-10-8-6.6;

(B) purchase insurance; or

(C) establish and maintain a program of self-insurance; to benefit school corporation employees, which may include accident, sickness, health, or dental coverage, provided that any plan of self-insurance shall include an aggregate stop-loss provision.

(15) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state government, the federal government, or from any other source.

(16) To defend any member of the governing body or any employee of the school corporation in any suit arising out of the performance of ~~his~~ **the member's or employee's** duties for or employment with, the school corporation, provided the governing body by resolution determined that such action was taken in good faith. To save any such member or employee harmless from any

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liability, cost, or damage in connection therewith, including but not limited to the payment of any legal fees, except where such liability, cost, or damage is predicated on or arises out of the bad faith of such member or employee, or is a claim or judgment based on ~~his~~ **the member's or employee's** malfeasance in office or employment.

(17) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures for the government and management of the schools, property, facilities, and activities of the school corporation, its agents, employees, and pupils and for the operation of its governing body, which rules, regulations, and procedures may be designated by any appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

(18) To ratify and approve any action taken by any member of the governing body, any officer of the governing body, or by any employee of the school corporation after such action is taken, if such action could have been approved in advance, and in connection therewith to pay any expense or compensation permitted under IC 20-5-1 through IC 20-5-6 or any other law.

(19) To exercise any other power and make any expenditure in carrying out its general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational standpoint in carrying out school purposes of the school corporation, including but not limited to the acquisition of property or the employment or contracting for services, even though such power or expenditure shall not be specifically set out herein. The specific powers set out in this section shall not be construed to limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-5-1 through IC 20-5-6 by specific language or by reference to other law.

SECTION 3. IC 20-5-2.7 IS ADDED TO THE INDIANA CODE AS NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 2.7. Cooperative Risk Management Programs

Sec. 1. As used in this chapter, "aggregate insurance coverage" means the coverage provided by an insurance contract that:

- (1) is purchased by a cooperative program; and**
- (2) provides excess coverage if the aggregate amount of claims submitted by member school corporations and payable by the self-insurance fund exceeds the total amount of self-insured risk retained by the members in a fiscal year.**

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1 Sec. 2. As used in this chapter, "commissioner" means the
2 insurance commissioner appointed under IC 27-1-1-2.

3 Sec. 3. As used in this chapter, "cooperative program" means a
4 cooperative risk management program established under this
5 chapter.

6 Sec. 4. As used in this chapter, "member" refers to a school
7 corporation that enters into an interlocal agreement with another
8 school corporation to establish a cooperative program.

9 Sec. 5. As used in this chapter, "self-insurance fund" means an
10 actuarially sound fund established by a cooperative program as a
11 reserve to cover self-insured risk retained by the members for
12 losses covered under this chapter and to pay premiums for
13 aggregate insurance coverage and specific insurance coverage
14 required under this chapter.

15 Sec. 6. As used in this chapter, "specific insurance coverage"
16 means the coverage provided by one (1) or more insurance
17 contracts that:

- 18 (1) are purchased by a cooperative program; and
- 19 (2) provide excess coverage for a part of a specific claim that
- 20 exceeds the amount covered by the self-insurance fund.

21 Sec. 7. (a) Two (2) or more school corporations may enter into
22 an interlocal agreement under IC 36-1-7 to establish a cooperative
23 risk management program through which the school corporations
24 agree to maintain a program of joint self-insurance to cover
25 certain retained risks and to jointly purchase aggregate insurance
26 coverage and specific insurance coverage, including the following:

- 27 (1) Casualty insurance, including general and professional
- 28 liability coverage and student accident insurance.
- 29 (2) Property insurance.
- 30 (3) Automobile insurance, including motor vehicle liability
- 31 insurance coverage and security for motor vehicles owned or
- 32 operated, and protection against other liability and loss
- 33 associated with the ownership of motor vehicles.
- 34 (4) Surety and fidelity insurance coverage.
- 35 (5) Umbrella and excess insurance coverage.
- 36 (6) Worker's compensation coverage.

37 (b) A cooperative program established under this chapter is a
38 separate legal entity with the power to:

- 39 (1) sue and be sued;
- 40 (2) make contracts; and
- 41 (3) hold and dispose of real and personal property.

42 Sec. 8. A cooperative program established under this chapter is

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1 subject to regulation by the department of insurance created by
2 IC 27-1-1-1.

3 Sec. 9. (a) A cooperative program shall:

4 (1) establish a self-insurance fund with an aggregate limit on
5 the total amount of self-insured risk retained by the members
6 in a fiscal year; and

7 (2) maintain aggregate insurance coverage and specific
8 insurance coverage.

9 (b) A self-insurance fund established under subsection (a) must
10 be funded at the beginning of each fiscal year by a contribution
11 from each member in an amount that reflects the member's share
12 of self-insured risk and other costs of the cooperative program.

13 (c) Annual contributions to the self-insurance fund under
14 subsection (b) must be:

15 (1) determined using generally accepted actuarial standards;

16 (2) set to fund at least one hundred percent (100%) of the
17 self-insured risk retained by the members in a fiscal year plus
18 the other costs of the cooperative program, including
19 premiums for aggregate insurance coverage and specific
20 insurance coverage; and

21 (3) approved by the commissioner.

22 Sec. 10. (a) An interlocal agreement entered into under section
23 7 of this chapter must:

24 (1) establish the cooperative program as a separate legal
25 entity; and

26 (2) specify the organization, composition, and powers of the
27 governing authority of the cooperative program as required
28 by IC 36-1-7-3.

29 (b) The governing authority of the cooperative program shall
30 adopt bylaws concerning the following:

31 (1) A financial plan setting forth in general terms:

32 (A) the types of risks covered under the cooperative
33 program;

34 (B) the aggregate limit on the total amount of self-insured
35 risk retained by the cooperative program in a fiscal year;

36 (C) the minimum amount of specific insurance coverage
37 and aggregate insurance coverage that must be maintained
38 by the cooperative program; and

39 (D) the procedure for determining each member's annual
40 contribution to the self-insurance fund.

41 (2) A plan of management that provides for:

42 (A) the responsibility of the governing authority with

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regard to:

- (i) maintaining the amount of reserves in the self-insurance fund;
- (ii) disposing of surpluses; and
- (iii) administering the cooperative program in the event of termination;

(B) the basis on which new members may be admitted to, and existing members may leave, the cooperative program, including a provision specifying that an existing member may not leave the cooperative program unless the member's departure is specifically approved by the commissioner; and

(C) other provisions necessary or desirable for the operation of the cooperative program.

(c) The following must be submitted to and approved by the commissioner before a cooperative program may commence operations:

- (1) The interlocal agreement described in subsection (a).
- (2) The bylaws described in subsection (b).
- (3) The form and purchase by the cooperative program of any insurance contracts, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) An accounting, based on generally accepted actuarial standards, of sufficient reserves committed before commencement of operations to pay obligations of the cooperative program.
- (5) Each coverage document form to be issued by the cooperative program.
- (6) Any other information determined necessary by the commissioner.

(d) If the commissioner does not disapprove the information submitted under subsection (c) earlier than thirty (30) days after the information is submitted, the information is considered approved.

Sec. 11. (a) A cooperative program shall have an annual audit performed by an independent certified public accounting firm according to guidelines established by the state board of accounts.

(b) Not later than one hundred eighty (180) calendar days after the close of a cooperative program's fiscal year, the cooperative program must furnish the cooperative program's members with audited financial statements certified by an independent certified public accounting firm.

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(c) Copies of the audit report and certified financial statements required under this section must be provided to the commissioner and the state board of accounts not later than one hundred eighty (180) calendar days after the close of the cooperative program's fiscal year.

(d) If a cooperative program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the cooperative program.

(e) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the commissioner.

Sec. 12. The assets of a cooperative program must be:

- (1) treated as a joint investment fund under IC 20-5-11-5; and
- (2) invested under IC 5-13-9 in the same manner as other public funds.

Sec. 13. Not later than sixty (60) calendar days after the beginning of a cooperative program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the cooperative program.
- (2) A copy of each coverage document form issued by the cooperative program.
- (3) A copy of the insurance contracts purchased by the cooperative program, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) A copy of the interlocal agreement.

Sec. 14. (a) If a cooperative program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the cooperative program.

(b) Not later than thirty (30) calendar days after a cooperative program receives a notice of noncompliance under subsection (a), the cooperative program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may allow a period of one (1) year or less, as determined by the commissioner, during which the cooperative program may restore compliance.

(d) If a plan to restore compliance is:

- (1) not filed under subsection (b);
- (2) filed under subsection (b) and not approved by the

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1 commissioner; or

2 (3) filed under subsection (b), approved by the commissioner,
3 and at the end of the period determined by the commissioner
4 under subsection (c) the cooperative program is not in
5 compliance with this chapter;

6 the commissioner may grant additional time to comply, or the
7 commissioner may suspend, limit, or terminate the authority of the
8 cooperative program to do business in this state.

9 (e) A cooperative program is subject to IC 27-9.

10 (f) A cooperative program shall be considered a member insurer
11 for purposes of IC 27-6-8.

12 Sec. 15. (a) Motor vehicle coverage provided by a cooperative
13 program must provide the ability for a member to respond in
14 damages for liability arising out of the ownership, maintenance, or
15 use of a motor vehicle in amounts at least equal to the amounts
16 required under IC 9-25-4.

17 (b) A member that participates in the motor vehicle coverage
18 provided by a cooperative program is considered to meet the
19 financial responsibility requirements set forth in IC 9-25-4, and an
20 application for a certificate of self-insurance under IC 9-25-4-11 is
21 not required.

22 Sec. 16. Information regarding the:

23 (1) portion of funds; or

24 (2) liability reserve;

25 established by a cooperative program to satisfy a specific claim or
26 cause of action is confidential and is not subject to subpoena or
27 order to produce, except in a supplementary or an ancillary
28 proceeding to enforce a judgment. This section does not prohibit
29 the commissioner from obtaining the information described in this
30 section.

31 Sec. 17. The department of insurance may adopt rules under
32 IC 4-22-2 to implement this chapter.

33 SECTION 4. IC 21-2-5.6-2 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The
35 self-insurance fund may be used to provide monies for the following
36 purposes:

37 (1) the payment of any judgment rendered against the school
38 corporation, or rendered against any officer or employee of the
39 school corporation for which the school corporation is liable
40 under IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5,
41 IC 34-4-16.6, or IC 34-4-16.7 before their repeal);

42 (2) the payment of any claim or settlement for which the school

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corporation is liable pursuant to IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before their repeal);

(3) the payment of any premium, management fee, claim, or settlement for which the school corporation is liable pursuant to any federal or state statute including but not limited to payments pursuant to IC 22-3 and IC 22-4; ~~or~~

(4) the payment of any settlement or claim for which insurance coverage is permitted under IC 20-5-2-2(14); **or**

(5) the payment of a contribution to the self-insurance fund of a cooperative risk management program under IC 20-5-2.7-9.

SECTION 5. IC 27-6-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a)** This chapter applies to all kinds of direct insurance except:

(1) life, annuity, health, or disability insurance;

(2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;

(3) fidelity or surety bonds, or any other bonding obligations;

(4) credit insurance, vendors' single interest insurance, or collateral protection insurance or similar insurance with the primary purpose of protecting the interests of a creditor arising out of a creditor-debtor transaction;

(5) warranty or service contract insurance;

(6) title insurance;

(7) ocean marine insurance;

(8) a transaction between a person or an affiliate of a person and an insurer or an affiliate of an insurer that involves the transfer of investment or credit risk without a transfer of insurance risk;

(9) insurance provided by or guaranteed by a government entity; and

(10) insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound.

(b) This chapter applies to coverage provided under a cooperative program established under IC 20-5-2.7. For purposes of this chapter, a cooperative program is considered to be a member insurer.

SECTION 6. IC 27-6-8-4, AS AMENDED BY P.L.129-2003, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. As used in this chapter, unless otherwise provided:

(1) The term "account" means any one (1) of the three (3)

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accounts created by section 5 of this chapter.

(2) The term "association" means the Indiana Insurance Guaranty Association created by section 5 of this chapter.

(3) The term "commissioner" means the commissioner of insurance of this state.

(4) The term "covered claim" means ~~an unpaid~~ **a claim that has not been paid from any source and** which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer becomes an insolvent insurer after the effective date (January 1, 1972) of this chapter and (a) the claimant or insured is a resident of this state at the time of the insured event or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall be limited as provided in section 7 of this chapter, and shall not include (1) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. However, a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a "covered claim" may be filed directly with the receiver or liquidator of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer; nor (2) any supplementary obligation including but not limited to adjustment fees and expenses, attorney fees and expenses, court costs, interest and bond premiums, whether arising as a policy benefit or otherwise, prior to the appointment of a liquidator; nor (3) any unpaid claim that is not both filed within one (1) year after an order of liquidation and permitted to share in liquidation distributions under IC 27-9-3-33 if the insolvent insurer is a domestic insurer or in accordance with the applicable provisions of the law of the state of domicile if the insolvent insurer is not a domestic insurer; nor (4) any claim by a person whose net worth at the time an insured event occurred was more than five million dollars (\$5,000,000); nor (5) a claim against a person insured by an insolvent insurer if the person's net worth at the time an insured event occurred was more than ~~fifty~~ **twenty-five** million dollars ~~(\$50,000,000);~~ **(\$25,000,000);** nor (6) any claim by a person who directly or indirectly controls, is controlled, or is under common control with an insolvent insurer on December 31 of the year before the order

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of liquidation. All covered claims filed in the liquidation proceedings shall be referred immediately to the association by the liquidator for processing as provided in this chapter.

(5) The term "insolvent insurer" means (a) a member insurer holding a valid certificate of authority to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) against whom a final order of liquidation, with a finding of insolvency, to which there is no further right of appeal, has been entered by a court of competent jurisdiction in the company's state of domicile. "Insolvent insurer" shall not be construed to mean an insurer with respect to which an order, decree, judgment or finding of insolvency whether preliminary or temporary in nature or order to rehabilitation or conservation has been issued by any court of competent jurisdiction prior to January 1, 1972 or which is adjudicated to have been insolvent prior to that date.

(6) The term "member insurer" means any person who is licensed or holds a certificate of authority under IC 27-1-6-18 or IC 27-1-17-1 to transact in Indiana any kind of insurance for which coverage is provided under section 3 of this chapter, including the exchange of reciprocal or inter-insurance contracts. The term includes any insurer whose license or certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily surrendered. A "member insurer" does not include farm mutual insurance companies organized and operating pursuant to IC 27-5.1 other than a company to which IC 27-5.1-2-6 applies.

(7) The term "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct premiums written" does not include premiums on contracts between insurers or reinsurers.

(8) The term "person" means an individual ~~corporation, limited liability company, partnership, reciprocal or inter-insurance exchange, association, or voluntary organization~~ or a legal entity, including a governmental entity.

(9) The term "self-insurer" means a person that covers the person's liability through a qualified individual or group self-insurance program or another formal program created for the specific purpose of covering liabilities typically covered by insurance.

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SECTION 7. IC 27-6-8-6, AS AMENDED BY P.L.268-1999, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) The board of directors of the association shall consist of nine (9) member insurers one (1) of whom shall be selected by or from among each of the following groups representative of member insurers, such selection to be subject to the approval of the commissioner:

(1) One (1) person representing the American Insurance Association.

(2) One (1) person representing the Alliance of American Insurers.

(3) One (1) person representing the National Association of Independent Insurers.

(4) One (1) person representing the National Association of Mutual Insurance Companies.

(5) One (1) person representing the Insurance Institute of Indiana.

(6) Three (3) persons representing the:

(A) domestic stock companies; **or**

(B) domestic mutual companies; **or**

~~(C) domestic reciprocal insurers;~~

with not more than two (2) persons representing **any either** category.

(7) One (1) person representing independent unaffiliated stock, fire, and casualty companies to be appointed by the commissioner.

(b) Not more than one (1) member insurer in a group of insurers under the same management or ownership shall serve as a director at the same time.

(c) Directors shall serve such terms as shall be established in the plan of operation.

(d) Vacancies on the board shall, **to the extent possible**, be filled for the remaining period of the term in the same manner as the initial selection.

(e) If no directors are selected by March 1, 1972, the commissioner may appoint the initial members of the board of directors.

(f) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(g) Directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 8. IC 27-6-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) The association shall:

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(i) Be obligated to the extent of the covered claims ~~as defined herein~~ existing at the time of the order of liquidation or arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if ~~he~~ **the insured** does so within thirty (30) days of the determination. This obligation shall include only that amount of each covered claim which is less than ~~one~~ **two** hundred ~~fifty~~ thousand dollars ~~(\$100,000)~~ **(\$250,000)**. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the applicable limits provided in the policy from which the claim arises, nor shall the association be obligated in an amount in excess of ~~three~~ **five** hundred thousand dollars ~~(\$300,000)~~ **(\$500,000)** per policy for all claims arising out of one (1) occurrence. The return of unearned premium is limited to the lesser of eighty percent (80%) of the paid but unearned premium or ~~six hundred fifty~~ dollars ~~(\$650)~~ multiplied by the number of months or partial months remaining in the policy term, not to exceed ~~twelve (12) months~~ **ten thousand dollars (\$10,000) per policy**.

(1) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, except claims under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the amount for which the association shall be obligated shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of the claimant's inability to work and earn wages or salary or their equivalent that would otherwise have been earned in the normal course of such injured claimant's employment, to which may be added at the discretion of the association a sum not to exceed one thousand dollars (\$1,000) for all other costs and expenses incurred by the claimant prior to the insolvency. In the case of a claim for wrongful death, the foregoing obligation of the association shall, in addition to the limits set forth above, be subject to the limitations provided by the wrongful death statutes of the state. Such amounts which are legally payable because of the death of a claimant shall be paid to the claimant's estate, to the claimant's father or mother or guardian, to the surviving spouse or children, or to the next of kin as set out in IC 34-23-1 and IC 34-23-2.

The amount for which the association shall be obligated may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other

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persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured.

In the case of claims arising from bodily injury, sickness, or disease, including those in which death results, under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the association is obligated only to the extent provided under IC 22-3.

(2) A third party having a covered claim against any insured of an insolvent member insurer may file such claim in the liquidation proceeding under IC 27-9-3 if such insolvent member insurer is a domestic insurer and pursuant to the applicable provisions of law of the state of domicile if such insolvent member insurer is not a domestic insurer. The liquidator shall immediately refer said claim to the association to process as provided in this chapter unless the claimant shall within thirty (30) days from the date of filing said claim in the liquidation proceeding, file with the commissioner as liquidator a written demand that said claim be processed in liquidation proceedings as a claim not covered by this chapter.

(ii) Be deemed the insurer to the extent of its obligation on the covered claims as limited by this chapter and to this extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. ~~including those relating to reinsurance contracts and treaties entered into by the insolvent insurer. However, the association's obligation to defend any insured of the insolvent insurer or to indemnify against the costs of such defense terminates as soon as the claimant or claimants have been paid all benefits that they are entitled to under this chapter. An obligation of the association to defend an insured on a covered claim ceases upon the association's payment, by settlement releasing the insured or on a judgement, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit or upon the association's tender of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limit to a claimant under this chapter.~~

(iii) Allocate claims paid and expenses incurred among the three (3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under paragraph (i) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examination under IC 27-6-8-12 and other expenses authorized by this chapter. The assessments of each member insurer shall be on a uniform percentage basis in the proportion that the net direct written

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premiums in this state of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account: of net direct written premium in the preceding calendar year on the kinds of insurance in the account. A member insurer may not be assessed in a year on an account an amount greater than one percent (1%) of the member insurer's net direct written premiums in Indiana for the preceding calendar year on the kinds of insurance in the account. However, the assessment to each member insurer in the account must initially be based on the written premium of each member insurer as shown in the latest year's annual financial statement on file with the commissioner. The initial assessment must be adjusted by applying the same rate of assessment as initially used to each member insurer's written premium as shown on the annual statement for the year preceding the year of the assessment. The difference between the initial assessment and the adjusted assessment must be charged or credited to each member insurer by the association as soon as practical after the filing of the annual statements of the member insurers with the commissioner for the year on which the adjusted assessment is based. In the case of an insurer that is a member insurer when the initial assessment is made and that pays the initial assessment, but is not a member insurer at the time of the adjusted assessment by reason of the insurer's insolvency or withdrawal from the state and surrender of the insurer's certificate of authority, credit resulting from the adjustment accruing to the insurer must be refunded to the insurer by the association.

However, in addition to the pro rata assessments already described, an assessment may be made against each member insurer in a stated amount up to fifty dollars (\$50) per year for the purpose of paying the administrative expenses of the association. **Unless otherwise authorized under this section,** there shall be no assessment for any account so long as assets held in such account are sufficient to cover all estimated payments for liquidation in process under such described in **this paragraph (iii) for the account.**

Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year on any account an amount greater than one percent (1%) of that member insurer's net direct written premiums in this state for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of

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the association in any account does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders by a company whose assessment has been deferred. A deferred assessment shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies whose assessments were increased as the result of such deferment, or at the option of any such company, shall be credited to future assessments against such company.

(iv) Investigate, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases, and judgments may be properly contested, and as appropriate to contest them.

(v) Notify such persons as the commissioner directs under IC 27-6-8-9(b)(i).

(vi) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(vii) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter. Any unreimbursed obligation of the association to a member insurer designated a servicing facility shall constitute an admitted asset of such member insurer.

(viii) Be entitled to and permitted to examine all claims, files, and records of an insolvent insurer at such times and to such extent as necessary or appropriate to obtain information regarding covered claims individually and in the aggregate, and to establish such procedures as appropriate to obtain prompt notice of all covered claims and information pertaining thereto during the course of liquidation.

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(b) The association may:

(i) Appear in, defend, and appeal any action on a covered claim but it shall have no obligation to pay any amount in excess of the provisions of IC 27-6-8-7.

(ii) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(iii) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(iv) Sue or be sued.

(v) Negotiate and become a party to any contracts as are necessary to carry out the purpose of this chapter.

(vi) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(vii) Refund to the then member insurers in proportion to the contribution of each such member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of the calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that the association may retain as a reserve fund from the excess of the assets over liabilities at the end of any calendar year an amount ~~not to exceed ten percent (10%) of such excess assets of such account.~~ **considered reasonable by the board of directors in light of anticipated future obligations of the association. Association money may not be considered part of the state general fund and may not be used for any purpose except for the payment of the debts, claims, obligations, and liabilities of the association.** Any such reserve fund or earnings from its investment shall be used only for the payment of covered claims and authorized association expenses. Upon appropriate action by the board of directors such reserve fund shall be refunded to the then member insurers in proportion to the total contribution of each such member insurer to such account.

SECTION 9. IC 27-6-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) **For purposes of this section, "claim under an insurance policy" includes:**

(1) a claim against a health maintenance organization, a hospital plan corporation, or a professional health service corporation; and

(2) an amount payable by or on behalf of a self-insurer.

(b) Any person having a claim ~~against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim,~~ shall be required to exhaust first

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the person's right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under regardless of whether the insurance policy is issued by a member insurer, is the kind of insurance to which this chapter applies under section 3 of this chapter, or provides first party or third party coverage that arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall exhaust all coverage under the insurance policy before filing a claim against the association. An amount payable on a covered claim under this chapter must be reduced by the full applicable limits stated in the insurance policy and the association must receive a full credit for the stated limits, or if there are no applicable limits, the amount payable on the covered claim must be reduced by the total recovery. The liability of a person insured under an insurance policy of an insolvent insurer that includes an amount payable on a covered claim under this chapter shall be reduced by the same amount by which the association's amount payable on a covered claim is reduced under this section.

(c) Notwithstanding subsection (b), a claim under an insurance policy that provides liability coverage to a person who may be:

(1) jointly and severally liable; or

(2) a joint tortfeasor;

with the person covered under a policy of an insolvent insurer is considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association and a person is not required to exhaust any right under the policy of an insolvent insurer.

~~(b)~~ (d) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a worker's compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SECTION 10. IC 27-9-1-1, AS AMENDED BY P.L.5-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Proceedings under this article apply to the following:

(1) All insurers who are doing, or who have done, insurance

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- 1 business in Indiana, and against whom claims arising from that
- 2 business may exist.
- 3 (2) All insurers who purport to do insurance business in Indiana.
- 4 (3) All insurers who have insureds resident in Indiana.
- 5 (4) All other persons organized or in the process of organizing
- 6 with the intent to do an insurance business in Indiana.
- 7 (5) All nonprofit service plans, fraternal benefit societies, and
- 8 beneficial societies.
- 9 (6) All title insurance companies.
- 10 (7) All health maintenance organizations under IC 27-13.
- 11 (8) All multiple employer welfare arrangements under
- 12 IC 27-1-34.
- 13 (9) All limited service health maintenance organizations under
- 14 IC 27-13-34.
- 15 (10) All mutual insurance holding companies under IC 27-14.
- 16 **(11) All cooperative programs established under IC 20-5-2.7.**
- 17 **SECTION 11. An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senator Lanane be added as second author of Senate Bill 453.

CLARK

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 453, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete line 27.

Page 6, line 28, delete "subsection (b)(iii)".

Page 7, line 27, reset in roman "No member insurer may be".

Page 7, reset in roman lines 28 through 30.

Page 7, line 31, reset in roman "account".

Page 7, line 31, delete "If the maximum assessment, together with the other assets".

Page 7, delete lines 32 through 42.

Page 8, delete lines 1 through 9.

Page 8, line 11, delete "and amounts assessed from other".

Page 8, line 12, delete "accounts".

and when so amended that said bill do pass.

(Reference is to SB 453 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 453 be amended to read as follows:

Page 9, line 34, delete "or" and insert ",".

Page 9, line 35, after "chapter," insert "**or provides first party or third party coverage**".

Page 9, line 42, after "limits, the" insert "**amount payable on the covered**".

Page 10, line 1, after "recovery." insert "**The liability of a person insured under an insurance policy of an insolvent insurer that includes an amount payable on a covered claim under this chapter shall be reduced by the same amount by which the association's amount payable on a covered claim is reduced under this section.**".

Page 10, delete lines 2 through 18, begin a new paragraph and insert:

"(c) Notwithstanding subsection (b), a claim under an insurance policy that provides liability coverage to a person who may be:

(1) jointly and severally liable; or

(2) a joint tortfeasor;

with the person covered under a policy of an insolvent insurer is considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association and a person is not required to exhaust any right under the policy of an insolvent insurer."

(Reference is to SB 453 as printed January 30, 2004.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 453, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-10-8-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.8. (a) As used in this section, "pilot project" refers to the school corporation health benefit pilot project established by the state personnel department under subsection (d).**

(b) As used in this section, "state employee health plan" means:

- (1) the self-insurance program established by the state personnel department under section 7(b) of this chapter; or**
- (2) a contract with a prepaid health care delivery plan entered into by the state personnel department under section 7(c) of this chapter.**

(c) Notwithstanding any other provision of this chapter to the contrary, and notwithstanding IC 20-5-2-2(14), a school corporation may:

- (1) apply to participate in the pilot project; and**
- (2) if chosen by the department of insurance, participate in the pilot project.**

(d) The state personnel department, in cooperation with the department of insurance, shall develop and implement a school corporation health benefit pilot project. The pilot project:

(1) must enable ten (10) school corporations that:

- (A) apply for participation in the project; and**
- (B) are chosen by the department of insurance;**

to provide coverage of health care services for active and retired employees of the school corporation under a state employee health plan that covers active state employees and is chosen by the school corporation; and

(2) must be established not later than January 1, 2005.

(e) The pilot project must do the following:

- (1) Specify participation requirements, including minimum participation and contribution requirements, and an application process for school corporations that wish to apply.**
- (2) Provide for the department of insurance to choose ten (10) eligible school corporations for participation in the project.**
- (3) Provide for enrollment of the active and retired employees**

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of the participating school corporations in a state employee health plan not later than June 30, 2005.

(4) Provide for coverage of the active and retired employees of the participating school corporations under the state employee health plan until a date not earlier than June 30, 2010, and not later than December 31, 2010.

(5) Require the state personnel department to provide to the legislative council in an electronic format under IC 5-14-6:

(A) an annual report not later than July 1 of each year; and

(B) a final report, including aggregate information, not later than July 1, 2011;

concerning the effect of the participation in the state employee health plan by the active and retired employees of the school corporation employees, including the effect on premium rates, costs to the state and to the school corporations, and any other information determined relevant by the legislative council.

(6) Conclude insurance coverage not later than December 31, 2010.

(f) A school corporation that participates in the pilot project under this section shall provide for payment of the premium for the coverage as provided in section 2.6 of this chapter. The state shall not pay any part of the premium for the coverage. The administrator of the state employee health plan described in subsection (b)(1) shall not pay any part of the administrative cost or other costs of the coverage.

(g) The state personnel department may adopt rules under IC 4-22-2 to implement this section.

(h) This section expires December 31, 2011.

SECTION 2. IC 20-5-2-2, AS AMENDED BY P.L.286-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. In carrying out the school purposes of each school corporation, its governing body acting on its behalf shall have the following specific powers:

(1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law.

(2) To take charge of, manage, and conduct the educational affairs of the school corporation and to establish, locate, and provide the necessary schools, school libraries, other libraries where permitted by law, other buildings, facilities, property, and equipment therefor.

(2.5) To appropriate from the general fund an amount, not to

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exceed the greater of three thousand dollars (\$3,000) per budget year or one dollar (\$1) per pupil, not to exceed twelve thousand five hundred dollars (\$12,500), based upon the school corporation's previous year's average daily membership (as defined in IC 21-3-1.6-1.1) for the purpose of promoting the best interests of the school corporation by:

- (A) the purchase of meals, decorations, memorabilia, or awards;
- (B) provision for expenses incurred in interviewing job applicants; or
- (C) developing relations with other governmental units.

(3) To acquire, construct, erect, maintain, hold, and to contract for such construction, erection, or maintenance of such real estate, real estate improvements, or any interest in either, as the governing body deems necessary for school purposes, including but not limited to buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing of school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchases money contracts providing for a retention of a security interest by seller until payment is made or by notes where such contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or IC 21-5-12. To repair, remodel, remove, or demolish any such real estate, real estate improvements, or interest in either, as the governing body deems necessary for school purposes, and to contract therefor. To provide for energy conservation measures through utility energy efficiency programs or under a guaranteed energy savings contract as described in IC 36-1-12.5.

(4) To acquire such personal property or any interest therein as the governing body deems necessary for school purposes, including but not limited to buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by outright purchase for cash, or under conditional sales or purchase money contracts providing for a security interest by the seller until payment is made or by notes where such contract, security,

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retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish such personal property. All purchases and contracts delineated under the powers given under subdivision (3) and this subdivision shall be subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of agencies of the state as provided in section 3 of this chapter.

(5) To sell or exchange any of such real or personal property or interest therein, which in the opinion of the governing body is not necessary for school purposes, in accordance with IC 20-5-5, to demolish or otherwise dispose of such property if, in the opinion of the governing body, it is not necessary for school purposes and is worthless, and to pay the expenses for such demolition or disposition.

(6) To lease any school property for a rental which the governing body deems reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children aged five (5) through fourteen (14) years that operates before or after the school day, or both, and during periods when school is not in session;

if the property is not needed for school purposes. Under this subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if the property subject to a long term lease is being paid for from money in the school corporation's debt service fund, then all proceeds from the long term lease shall be deposited in that school corporation's debt service fund so long as the property has not been paid for. The governing body may, at its option, use the procedure specified in IC 36-1-11-10 in leasing property under this subdivision.

(7) To employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under IC 20-6.1-3), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists,

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nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school purposes, including but not limited to the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and such other personnel or services, all as the governing body considers necessary for school purposes. To fix and pay the salaries and compensation of such persons and such services. To classify such persons or services and to adopt schedules of salaries or compensation. To determine the number of such persons or the amount of services thus employed or contracted for. To determine the nature and extent of their duties. The compensation, terms of employment, and discharge of teachers shall, however, be subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers shall be subject to and shall be governed by any laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of such school corporation shall be submitted to the state board of accounts for approval to the end that such services shall be used by the school corporation when the governing body determines that it is in the best interests of the school corporation while at the same time providing reasonable accountability for the funds expended.

(8) Notwithstanding the appropriation limitation in subdivision (2.5), when the governing body by resolution deems a trip by an employee of the school corporation or by a member of the governing body to be in the interest of the school corporation, including but not limited to attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit such employee to be absent in connection with such trip without any loss in pay and to refund to such employee or to such member ~~his~~ reasonable hotel and board bills and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

(9) To transport children to and from school, when in the opinion of the governing body such transportation is necessary, including but not limited to considerations for the safety of such children

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and without regard to the distance they live from the school, such transportation to be otherwise in accordance with the laws applicable thereto.

(10) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including but not limited to the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate such program, and the purchase of any material and supplies therefor, charging students for the operational costs of such lunch program, fixing the price per meal or per food item. To operate such lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in any surplus commodity or lunch aid program.

(11) To purchase textbooks, to furnish them without cost or to rent them to students, to participate in any textbook aid program, all in accordance with applicable law.

(12) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(13) To levy taxes, to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with the laws applicable thereto. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 20-5-4.

(14) To purchase insurance, ~~or to~~ establish and maintain a program of self-insurance, **or enter into an interlocal agreement with one (1) or more school corporations to establish and maintain a cooperative risk management program under IC 20-5-2.7**, relating to the liability of the school corporation or its employees in connection with motor vehicles or property and for any additional coverage to the extent permitted and in accordance with IC 34-13-3-20. To purchase additional insurance, ~~or to~~ establish and maintain a program of self-insurance, **or enter into an interlocal agreement with one (1) or more school corporations to establish and maintain a cooperative risk management program under IC 20-5-2.7**, protecting the school corporation and members of the governing body, employees, contractors, or agents of the school corporation from any liability, risk, accident, or loss related to any school property, school contract, school or school related activity, including but not limited to the purchase of insurance or the establishment and maintenance of a self-insurance program protecting such persons

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against false imprisonment, false arrest, libel, or slander for acts committed in the course of their employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to any property owned, leased, or held by the school corporation. To:

(A) participate in a state employee health plan under IC 5-10-8-6.6;

(B) purchase insurance; or

(C) establish and maintain a program of self-insurance; to benefit school corporation employees, which may include accident, sickness, health, or dental coverage, provided that any plan of self-insurance shall include an aggregate stop-loss provision.

(15) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state government, the federal government, or from any other source.

(16) To defend any member of the governing body or any employee of the school corporation in any suit arising out of the performance of ~~his~~ **the member's or employee's** duties for or employment with, the school corporation, provided the governing body by resolution determined that such action was taken in good faith. To save any such member or employee harmless from any liability, cost, or damage in connection therewith, including but not limited to the payment of any legal fees, except where such liability, cost, or damage is predicated on or arises out of the bad faith of such member or employee, or is a claim or judgment based on ~~his~~ **the member's or employee's** malfeasance in office or employment.

(17) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures for the government and management of the schools, property, facilities, and activities of the school corporation, its agents, employees, and pupils and for the operation of its governing body, which rules, regulations, and procedures may be designated by any appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

(18) To ratify and approve any action taken by any member of the governing body, any officer of the governing body, or by any employee of the school corporation after such action is taken, if such action could have been approved in advance, and in connection therewith to pay any expense or compensation

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permitted under IC 20-5-1 through IC 20-5-6 or any other law.

(19) To exercise any other power and make any expenditure in carrying out its general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational standpoint in carrying out school purposes of the school corporation, including but not limited to the acquisition of property or the employment or contracting for services, even though such power or expenditure shall not be specifically set out herein. The specific powers set out in this section shall not be construed to limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-5-1 through IC 20-5-6 by specific language or by reference to other law.

SECTION 3. IC 20-5-2.7 IS ADDED TO THE INDIANA CODE AS NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 2.7. Cooperative Risk Management Programs

Sec. 1. As used in this chapter, "aggregate insurance coverage" means the coverage provided by an insurance contract that:

- (1) is purchased by a cooperative program; and**
- (2) provides excess coverage if the aggregate amount of claims submitted by member school corporations and payable by the self-insurance fund exceeds the total amount of self-insured risk retained by the members in a fiscal year.**

Sec. 2. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2.

Sec. 3. As used in this chapter, "cooperative program" means a cooperative risk management program established under this chapter.

Sec. 4. As used in this chapter, "member" refers to a school corporation that enters into an interlocal agreement with another school corporation to establish a cooperative program.

Sec. 5. As used in this chapter, "self-insurance fund" means an actuarially sound fund established by a cooperative program as a reserve to cover self-insured risk retained by the members for losses covered under this chapter and to pay premiums for aggregate insurance coverage and specific insurance coverage required under this chapter.

Sec. 6. As used in this chapter, "specific insurance coverage" means the coverage provided by one (1) or more insurance contracts that:

- (1) are purchased by a cooperative program; and**

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- (2) provide excess coverage for a part of a specific claim that exceeds the amount covered by the self-insurance fund.

Sec. 7. (a) Two (2) or more school corporations may enter into an interlocal agreement under IC 36-1-7 to establish a cooperative risk management program through which the school corporations agree to maintain a program of joint self-insurance to cover certain retained risks and to jointly purchase aggregate insurance coverage and specific insurance coverage, including the following:

- (1) Casualty insurance, including general and professional liability coverage and student accident insurance.
- (2) Property insurance.
- (3) Automobile insurance, including motor vehicle liability insurance coverage and security for motor vehicles owned or operated, and protection against other liability and loss associated with the ownership of motor vehicles.
- (4) Surety and fidelity insurance coverage.
- (5) Umbrella and excess insurance coverage.
- (6) Worker's compensation coverage.

(b) A cooperative program established under this chapter is a separate legal entity with the power to:

- (1) sue and be sued;
- (2) make contracts; and
- (3) hold and dispose of real and personal property.

Sec. 8. A cooperative program established under this chapter is subject to regulation by the department of insurance created by IC 27-1-1-1.

Sec. 9. (a) A cooperative program shall:

- (1) establish a self-insurance fund with an aggregate limit on the total amount of self-insured risk retained by the members in a fiscal year; and
- (2) maintain aggregate insurance coverage and specific insurance coverage.

(b) A self-insurance fund established under subsection (a) must be funded at the beginning of each fiscal year by a contribution from each member in an amount that reflects the member's share of self-insured risk and other costs of the cooperative program.

(c) Annual contributions to the self-insurance fund under subsection (b) must be:

- (1) determined using generally accepted actuarial standards;
- (2) set to fund at least one hundred percent (100%) of the self-insured risk retained by the members in a fiscal year plus the other costs of the cooperative program, including

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premiums for aggregate insurance coverage and specific insurance coverage; and

(3) approved by the commissioner.

Sec. 10. (a) An interlocal agreement entered into under section 7 of this chapter must:

(1) establish the cooperative program as a separate legal entity; and

(2) specify the organization, composition, and powers of the governing authority of the cooperative program as required by IC 36-1-7-3.

(b) The governing authority of the cooperative program shall adopt bylaws concerning the following:

(1) A financial plan setting forth in general terms:

(A) the types of risks covered under the cooperative program;

(B) the aggregate limit on the total amount of self-insured risk retained by the cooperative program in a fiscal year;

(C) the minimum amount of specific insurance coverage and aggregate insurance coverage that must be maintained by the cooperative program; and

(D) the procedure for determining each member's annual contribution to the self-insurance fund.

(2) A plan of management that provides for:

(A) the responsibility of the governing authority with regard to:

(i) maintaining the amount of reserves in the self-insurance fund;

(ii) disposing of surpluses; and

(iii) administering the cooperative program in the event of termination;

(B) the basis on which new members may be admitted to, and existing members may leave, the cooperative program, including a provision specifying that an existing member may not leave the cooperative program unless the member's departure is specifically approved by the commissioner; and

(C) other provisions necessary or desirable for the operation of the cooperative program.

(c) The following must be submitted to and approved by the commissioner before a cooperative program may commence operations:

(1) The interlocal agreement described in subsection (a).

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- (2) The bylaws described in subsection (b).
- (3) The form and purchase by the cooperative program of any insurance contracts, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) An accounting, based on generally accepted actuarial standards, of sufficient reserves committed before commencement of operations to pay obligations of the cooperative program.
- (5) Each coverage document form to be issued by the cooperative program.
- (6) Any other information determined necessary by the commissioner.

(d) If the commissioner does not disapprove the information submitted under subsection (c) earlier than thirty (30) days after the information is submitted, the information is considered approved.

Sec. 11. (a) A cooperative program shall have an annual audit performed by an independent certified public accounting firm according to guidelines established by the state board of accounts.

(b) Not later than one hundred eighty (180) calendar days after the close of a cooperative program's fiscal year, the cooperative program must furnish the cooperative program's members with audited financial statements certified by an independent certified public accounting firm.

(c) Copies of the audit report and certified financial statements required under this section must be provided to the commissioner and the state board of accounts not later than one hundred eighty (180) calendar days after the close of the cooperative program's fiscal year.

(d) If a cooperative program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the cooperative program.

(e) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the commissioner.

Sec. 12. The assets of a cooperative program must be:

- (1) treated as a joint investment fund under IC 20-5-11-5; and
- (2) invested under IC 5-13-9 in the same manner as other public funds.

Sec. 13. Not later than sixty (60) calendar days after the

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beginning of a cooperative program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the cooperative program.
- (2) A copy of each coverage document form issued by the cooperative program.
- (3) A copy of the insurance contracts purchased by the cooperative program, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) A copy of the interlocal agreement.

Sec. 14. (a) If a cooperative program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the cooperative program.

(b) Not later than thirty (30) calendar days after a cooperative program receives a notice of noncompliance under subsection (a), the cooperative program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may allow a period of one (1) year or less, as determined by the commissioner, during which the cooperative program may restore compliance.

(d) If a plan to restore compliance is:

- (1) not filed under subsection (b);
- (2) filed under subsection (b) and not approved by the commissioner; or
- (3) filed under subsection (b), approved by the commissioner, and at the end of the period determined by the commissioner under subsection (c) the cooperative program is not in compliance with this chapter;

the commissioner may grant additional time to comply, or the commissioner may suspend, limit, or terminate the authority of the cooperative program to do business in this state.

(e) A cooperative program is subject to IC 27-9.

(f) A cooperative program shall be considered a member insurer for purposes of IC 27-6-8.

Sec. 15. (a) Motor vehicle coverage provided by a cooperative program must provide the ability for a member to respond in damages for liability arising out of the ownership, maintenance, or use of a motor vehicle in amounts at least equal to the amounts required under IC 9-25-4.

(b) A member that participates in the motor vehicle coverage provided by a cooperative program is considered to meet the

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financial responsibility requirements set forth in IC 9-25-4, and an application for a certificate of self-insurance under IC 9-25-4-11 is not required.

Sec. 16. Information regarding the:

- (1) portion of funds; or
- (2) liability reserve;

established by a cooperative program to satisfy a specific claim or cause of action is confidential and is not subject to subpoena or order to produce, except in a supplementary or an ancillary proceeding to enforce a judgment. This section does not prohibit the commissioner from obtaining the information described in this section.

Sec. 17. The department of insurance may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 4. IC 21-2-5.6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The self-insurance fund may be used to provide monies for the following purposes:

- (1) the payment of any judgment rendered against the school corporation, or rendered against any officer or employee of the school corporation for which the school corporation is liable under IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before their repeal);
- (2) the payment of any claim or settlement for which the school corporation is liable pursuant to IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before their repeal);
- (3) the payment of any premium, management fee, claim, or settlement for which the school corporation is liable pursuant to any federal or state statute including but not limited to payments pursuant to IC 22-3 and IC 22-4; ~~or~~
- (4) the payment of any settlement or claim for which insurance coverage is permitted under IC 20-5-2-2(14); ~~or~~

(5) the payment of a contribution to the self-insurance fund of a cooperative risk management program under IC 20-5-2.7-9.

SECTION 5. IC 27-6-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a)** This chapter applies to all kinds of direct insurance except:

- (1) life, annuity, health, or disability insurance;
- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) fidelity or surety bonds, or any other bonding obligations;

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- (4) credit insurance, vendors' single interest insurance, or collateral protection insurance or similar insurance with the primary purpose of protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) warranty or service contract insurance;
- (6) title insurance;
- (7) ocean marine insurance;
- (8) a transaction between a person or an affiliate of a person and an insurer or an affiliate of an insurer that involves the transfer of investment or credit risk without a transfer of insurance risk;
- (9) insurance provided by or guaranteed by a government entity; and
- (10) insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound.

(b) This chapter applies to coverage provided under a cooperative program established under IC 20-5-2.7. For purposes of this chapter, a cooperative program is considered to be a member insurer."

Page 10, after line 25, begin a new paragraph and insert:

"SECTION 10. IC 27-9-1-1, AS AMENDED BY P.L.5-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Proceedings under this article apply to the following:

- (1) All insurers who are doing, or who have done, insurance business in Indiana, and against whom claims arising from that business may exist.
- (2) All insurers who purport to do insurance business in Indiana.
- (3) All insurers who have insureds resident in Indiana.
- (4) All other persons organized or in the process of organizing with the intent to do an insurance business in Indiana.
- (5) All nonprofit service plans, fraternal benefit societies, and beneficial societies.
- (6) All title insurance companies.
- (7) All health maintenance organizations under IC 27-13.
- (8) All multiple employer welfare arrangements under IC 27-1-34.
- (9) All limited service health maintenance organizations under IC 27-13-34.
- (10) All mutual insurance holding companies under IC 27-14.

(11) All cooperative programs established under IC 20-5-2.7.
SECTION 11. An emergency is declared for this act."



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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 453 as reprinted February 4, 2004.)

FRY, Chair

Committee Vote: yeas 14, nays 0.

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